

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,

No. 14mj151

Plaintiff,

vs.

TRANSCRIPT OF
DETENTION HEARING

DENNIS JOHN IRVIN,

Defendant.

_____/ (from digital recording)

The Detention Hearing held before the Honorable Leonard T. Strand, Magistrate Judge of the United States District Court for the Northern District of Iowa, at the Federal Courthouse, 320 Sixth Street, Sioux City, Iowa, June 3, 2014, commencing at 2:51 p.m.

APPEARANCES

For the Plaintiff: TIMOTHY T. DUAX, ESQ.
Assistant United States Attorney
Ho-Chunk Centre - Suite 670
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Sioux City, IA 51101

For the Defendant: MATTHEW METZGAR, ESQ.
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1 THE COURT: United States versus Dennis Irvin.
2 Mr. Irvin is present in the courtroom with his attorney,
3 Mr. Metzgar. Mr. Duax is here for the United States.

4 Mr. Irvin has been arrested on a warrant issued out of
5 the Eastern District of Arkansas where he has a case pending.
6 The United States Attorney's Office there wants to revoke his
7 pretrial release and has alleged some violations of the terms of
8 his pretrial release. We had an initial appearance last week,
9 and at that time the government indicated it sought to have
10 Mr. Irvin remain in custody and be transported by the United
11 States marshals to Arkansas. Mr. Irvin requested to have a
12 detention hearing.

13 I believe -- as I look back through my notes and
14 through the docket, I believe the issue -- basically that's the
15 only issue we're to decide today is whether or not Mr. Irvin
16 gets transported by the marshals or whether he goes on his own.
17 Is that correct, Mr. Duax?

18 MR. DUAX: Yes, Your Honor.

19 THE COURT: And, Mr. Metzgar, do you agree with that?

20 MR. METZGAR: Yes, Your Honor.

21 THE COURT: All right. In that case, Mr. Duax, does
22 the government have evidence to present on that issue?

23 MR. DUAX: Your Honor, the government has evidence in
24 the form of a proffer that will include some facts submitted by
25 the defendant as well. And after presenting those facts, the

1 government will have no additional evidence.

2 THE COURT: All right. Any objection to the proffer,
3 Mr. Metzgar?

4 MR. METZGAR: No, Your Honor.

5 THE COURT: All right. Go ahead, Mr. Duax.

6 MR. DUAX: Your Honor, the government proffers the
7 following facts: The defendant was subject to special condition
8 U in the terms and conditions of his pretrial release that was
9 entered, I believe, on May 24 of 2013. And he knew he was
10 subject to that requirement.

11 The defendant knowingly contacted the victim on -- on
12 three -- with three communications on a single day by commenting
13 on her Pandora account. In at least one of the comments the
14 defendant made on the victim's Pandora account, he commented to
15 her about the amount of prison time he was facing in this case.
16 At the time the defendant commented on the victim's Pandora
17 account, he knew that she was under 18 years of age. And
18 defendant did not have written permission to contact the victim
19 prior to making that contact.

20 Other than the three comments on the victim's Pandora
21 account which were all made on a single -- in a single
22 transaction, he has not posted any additional comments since
23 then, and the communications occurred in March of 2014.

24 THE COURT: Thank you, Mr. Duax.

25 Mr. Metzgar, any evidence or additional information by

1 way of proffer?

2 MR. METZGAR: We also agreed that -- this is the
3 record down in the Eastern District of Arkansas -- that he has a
4 trial date of June 23, 2014, which is subject to a motion to
5 continue filed by the government and an objection by the
6 defense. So that's the status of the case down in Arkansas.

7 MR. DUAX: That's correct, Your Honor.

8 THE COURT: All right. Anything further, Mr. Metzgar?

9 MR. METZGAR: No, Your Honor.

10 THE COURT: All right. All right. I'll go ahead and
11 hear argument then. Mr. Duax?

12 MR. DUAX: Your Honor, based on the proffered facts,
13 unobjected-to facts, the defendant has clearly violated the
14 terms and conditions of his release. He was not to have contact
15 with any persons under the age of 18 without prior written
16 consent from his probation officer. He did not have that
17 consent. Therefore, he was in violation of his -- of his terms
18 and conditions of release.

19 What's troubling about this is both the timing and the
20 content of the communication. First it occurs well after this
21 case was indicted, well after he was placed on release, very far
22 into the process. And this all happens about ten months after
23 he was indicted, ten months after he had been on release and
24 then he comments to -- to the victim through her Pandora
25 account.

1 And the content of the communication, particularly the
2 communication which -- in which he tells her what type of prison
3 time he's facing, is clearly designed to impact her. By this
4 time he knows that she's going to be a witness in his case, and
5 he's trying to manipulate her into feeling sorry for him and
6 perhaps to change her testimony or not to testify. And that's
7 extremely troubling as well.

8 And for those reasons, Your Honor, do not believe
9 that -- I mean, all the defendant needs to manipulate people is
10 a smart phone, and there's just no way to keep that out of his
11 hands if he's out in the community.

12 The underlying offense didn't involve a gun, and it
13 didn't involve a knife, and it didn't involve a physical assault
14 and a lot of those things we associate directly with danger to
15 the community, violent behavior, assaultive behavior in those
16 fashions.

17 But in this particular case with respect to the
18 indicted conduct as well as the violation conduct, what we have
19 is manipulation. In the indicted conduct, the defendant
20 manipulated a young girl, 14-year-old girl, to engage in
21 sexually explicit conduct for the purposes of making a visual
22 depiction of it. And here we have again the use of the Internet
23 to manipulate a girl who at this point in March of 2014 I
24 believe is 16 years old. And so he is, you know, in his 40s
25 when all this is happening on both occasions.

1 So, Your Honor, based on that, it's clearly -- this
2 defendant, even if he's had periods where he's been compliant,
3 it didn't stop this from happening, and I don't think there is
4 any less restrictive means of protecting both this girl and
5 anyone else he might try to manipulate. There is no less
6 restrictive means other than taking him into custody now and
7 having him transported down to Eastern District of Arkansas to
8 face his trial.

9 THE COURT: Let me ask, I -- I just want to make sure
10 everybody's on the same page about what my decision is going to
11 be or what the context of my decision's going to be. The motion
12 to revoke pretrial release is pending in Arkansas, and I take it
13 I'm not being asked to revoke pretrial release. I'm just being
14 asked to have him transported down there to face that, not just
15 to face trial but to face the motion to revoke release. Or are
16 we conducting this hearing as if it's a revocation hearing on
17 pretrial release? It's confusing because I entered the original
18 order up here in Iowa, but then it was -- the motion's been
19 filed in Arkansas and it's in front of a judge in Arkansas as to
20 whether or not to revoke pretrial release. So what's your
21 position on that, Mr. Duax?

22 MR. DUAX: Your Honor, I consider today's hearing to
23 be whether or not his pretrial release is revoked. And I don't
24 think there's really any other way to go about it because in
25 order to have him transported to Arkansas in custody, you have

1 to change the terms of that order. You have to revoke.

2 Now, I suppose you could do a temporary revocation
3 subject to further findings in Arkansas, but the way I saw this
4 from the beginning was as a motion to revoke his pretrial
5 release.

6 THE COURT: Okay. Thank you, Mr. Duax.

7 Mr. Metzgar, when you -- in your argument would you
8 address that issue of what you think the procedural context
9 we're in, because I do think there's a little bit of an issue
10 there and whether or not whatever I decide today, am I revoking
11 release if that's what I decide to do, or am I just saying he
12 will be transported and remain in custody and it will be the
13 Arkansas court that makes that call about revoking release?

14 MR. METZGAR: Well, Your Honor, I think it's the
15 Arkansas's call about making release because they issued the
16 warrant, and so as a matter of semantics either way, revoking
17 release or temporarily detaining him for purposes of
18 transportation to Arkansas to allow them to make the
19 determination as to whether or not to revoke the supervised
20 release, we're asking that he be allowed to remain out.

21 This case has been going on for quite some time. It's
22 just amazing that they can't get this tried in Arkansas in my
23 opinion. And during this period of time he's been subject to
24 numerous conditions up here in Iowa including reporting to the
25 probation officer, doing treatment, UAs. And I didn't call Matt

1 Sturdevant for purposes of determining how many he did or didn't
2 do, but apparently they've all been clean for what he has done
3 because there's no release -- there's no violation in that
4 regard.

5 So we're dealing with a single day, single matter
6 incident type of deal where, you know, it's a conversation
7 where, okay, one person says something, some person says
8 something, some -- and that sort of thing. And I'm not making
9 excuses for what happened here, but in order to comment for a
10 person on this Pandora, apparently the other person has to be a
11 follower. And so that's how Mr. Irvin knew that this person was
12 here, that she was on his Pandora account, is that she signed up
13 as a follower of Mr. Irvin's Pandora account.

14 Again, if this is really manipulation, Judge, we would
15 have a lot more comments after the fact here. I believe this is
16 a single incident of -- where he was on his Pandora account, she
17 was a follower, and yeah, he made contact and -- but it wasn't
18 continuous. It's not threatening violence or anything of that
19 nature. It ceased.

20 And I think the Court should take that all into
21 consideration for purposes of the violation here as to whether
22 or not he's a risk for purposes of trial. The trial's June 23.
23 Right now the government wants a continuance, and his attorney
24 is resisting that for a case that's been indicted for well over
25 a year. I don't know why they can't get it to trial. But he

1 has a court date set. He should be allowed to go to Arkansas
2 for purposes of that court date. Thank you.

3 THE COURT: All right. Any response, Mr. Duax?

4 MR. DUAX: Just, Your Honor, this has never been about
5 threatening violence. This has always been about manipulation.
6 This has always been about that and how -- what other purpose
7 could there be for this man who -- if we're going to assign
8 who's responsible here, I think the 44-year-old is responsible
9 and not the 15-year-old or 16-year-old here.

10 And so to try to lay it off on her that somehow it was
11 her fault because she had to follow him on his Pandora account
12 is a little -- a little far afield of what happened here. He
13 was very specifically told you can't contact people under the
14 age of 18, and he did that knowing full well that it was a
15 violation. But he took the shot. Why? Why? Well, you know
16 why: Because of what he said because, hey, look, I'm facing a
17 lot of time here. Why else do that other than to manipulate?

18 And so given that purpose and given the fact that you
19 can't stop him from doing this again any other way, I think he
20 has to be detained pending trial.

21 Now, why -- the whys and wherefores of when he's going
22 to be tried in Arkansas I don't know. Who knows how many
23 motions to continue there have been and why -- what the basis
24 for them were? I don't know that. I don't know if it's
25 attributable to either party. I know the current motion's from

1 the government. But I don't know any of that, and I don't know
2 that it's relevant here.

3 What's relevant here is he violated the terms and
4 conditions of his release, and the way in which he did that
5 poses a danger to this victim who's already victimized once.
6 Now he's back at her again trying to get her to feel bad about
7 the fact that he is facing years in prison for what he
8 manipulated her to do before.

9 So, Your Honor, I think that's -- that's my response
10 is to try to say somehow that she had a part in this when she's
11 a child and he's an adult, that I think runs a wrong way here.

12 THE COURT: All right. My view of this is this is an
13 Arkansas case that's pending in the Eastern District of
14 Arkansas. It's an Arkansas warrant. It's an Arkansas motion to
15 revoke pretrial release. We started this last week as a Rule 5
16 proceeding simply to decide whether Mr. Irvin should be returned
17 to Arkansas.

18 I find that the government has established -- has met
19 the burden under Rule 5 for having Mr. Irvin detained and
20 transported in the custody of the United States marshals to face
21 the pending motion to revoke his pretrial release.

22 But I find that without prejudice to Mr. Irvin's right
23 to contest the motion to revoke pretrial release once he gets
24 there. I don't think that that motion is properly before this
25 Court. I'm not going to attempt to rule on the -- make a final

1 ruling on whether release -- pretrial release should be revoked.
2 I think that's going to have to be decided in Arkansas, but I am
3 going to order that Mr. Irvin stay in custody for purposes of
4 being transported to the Eastern District of Arkansas by the
5 United States marshals. And then the issue of whether his
6 pretrial release should be revoked can be determined then in
7 that district.

8 Anything further at this time, Mr. Duax?

9 MR. DUAX: No, Your Honor.

10 THE COURT: All right. Mr. Metzgar?

11 MR. METZGAR: No, Your Honor.

12 THE COURT: All right. We'll be in recess.

13 (The foregoing hearing was
14 concluded at 3:05 p.m.)
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19 CERTIFICATE

20 I certify that the foregoing is a correct transcript
21 to the best of my ability from the digital recording of
22 proceedings in the above-entitled matter.
23
24

25 S/Shelly Semmler
Shelly Semmler, RMR, CRR

6-19-14
Date